

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
Hometown Online, Inc.	)	CSR 5872-E
	)	
Petition for Determination of Effective	)	
Competition in Vernon Township, New Jersey	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: June 25, 2002**

**Released: July 10, 2002**

By the Deputy Chief, Media Bureau:

**I. INTRODUCTION**

1. Hometown Online, Inc. ("Hometown") has filed with the Commission a petition<sup>1</sup> pursuant to Section 76.7 of the Commission's rules for a determination of effective competition in Vernon Township, New Jersey pursuant to Section 623(a) of the Communications Act of 1934, as amended ("Communications Act"),<sup>2</sup> and the Commission's implementing rules.<sup>3</sup> More particularly, Hometown claims that it is subject to effective competition and is therefore exempt from cable rate regulation in Vernon Township because fewer than 30 percent of the households in Vernon Township subscribe to Hometown's cable services. Hometown asserts that it is subject to effective competition in Vernon Township under the "low penetration" effective competition test set forth in Section 623(1)(1)(A) of the Act. No opposition to the petition was filed.

**II. DISCUSSION**

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>4</sup> as that term is defined by Section 623(1) of the Communications Act and Section 76.905 of the Commission's rules.<sup>5</sup> The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.<sup>6</sup> Section 623(1) of the Communications Act provides that a cable operator is subject to effective competition, if either one of four tests for effective competition set forth

<sup>1</sup> See Public Notice, Special Relief and Show Cause Petitions, Report No. 0034, dated April 12, 2002.

<sup>2</sup> 47 U.S.C. § 543(a).

<sup>3</sup> 47 C.F.R. § 76.905(b).

<sup>4</sup> 47 C.F.R. § 76.906.

<sup>5</sup> See 47 U.S.C. § 543(1) and 47 C.F.R. § 76.905.

<sup>6</sup> See 47 C.F.R. §§ 76.906 & 907.

therein is met.<sup>7</sup> Under the test relevant here, a cable system will be deemed subject to effective competition if fewer than 30 percent of the households in the system's franchise area subscribes to the system's service.<sup>8</sup> A finding of effective competition exempts a cable operator from rate regulation and certain other of the Commission's cable regulations.<sup>9</sup>

3. Hometown is a wholly owned subsidiary of Warwick Valley Telephone Company ("WVT"), a facility-based, incumbent local exchange carrier. On March 6, 2002, Hometown obtained from the New Jersey Board of Public Utilities in Docket No. CE01110787 a certificate of authority pursuant to the New Jersey Cable Act to provide cable service in the entirety of Vernon Township.<sup>10</sup> Hometown provided information showing that, as of April 1, 2002, it was serving less than ten of the 8,368 households in Vernon Township, which produces a penetration figure of less than 0.2% of the households in Vernon Township.<sup>11</sup>

4. Hometown stated that a construction timetable set forth in the certificate requires Hometown to be capable of serving 95% of WVT's primary service area within the Township no later than three years from the date of the certificate. However, in view of available data showing that 7,744 of the Vernon Township's 8,368 households, or about 90%, are presently served by another cable system, Hometown expects to provide cable service to less than 30% of households in Vernon Township for the foreseeable future.<sup>12</sup> Relevant for present purposes is Hometown's current penetration rate of 0.2%, which is well below the 30% low penetration test threshold. Based on this record, we conclude that Hometown has submitted sufficient evidence to demonstrate that its cable systems serving Vernon Township, New Jersey is subject to effective competition.

### III. ORDERING CLAUSE

5. Accordingly, **IT IS ORDERED**, pursuant to authority delegated under Section 0.283 of the Commission's rules,<sup>13</sup> that the captioned petition for a determination of effective competition filed by Hometown Online, Inc. **IS HEREBY GRANTED**.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief, Media Bureau

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<sup>7</sup> See 47 U.S.C. § 543(I)(1)(A)-(D).

<sup>8</sup> See 47 U.S.C § 543(I)(1)(A) & 47 C.F.R. S 76.905(b)(1).

<sup>9</sup> See 47 C.F.R. §76.905.

<sup>10</sup> Petition at 2-3.

<sup>11</sup> *Id.* Hometown's Vernon Township household data is taken from 2000 Census data.

<sup>12</sup> *Id.* at 2-3.

<sup>13</sup> 47 C.F.R. § 0.283.